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No. 91-696

Supreme Court, U.S.
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In The

Supreme Court Of The United States

October Term, 1991

JAMES WILSON,
Petitioner

v.

SECURITY INSURANCE CO.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT
(Docket 13618)

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is the petition for Writ of Certiorari untimely?

2. Did the Connecticut Supreme Court deprive the petitioner of due process of law in *Wilson v. Security Ins. Co.*, 213 Conn. 532, 569 A.2d 40 (1990), by ordering judgment to be entered for the respondent based upon the Court's conclusion of law that stacking of uninsured motorist coverage on multiple vehicles under the fleet policy in question was not an objectively reasonable expectation of the parties to the contract?

PARTIES TO THE PROCEEDING

Petitioner: James Wilson

Respondent: Security Insurance Company

Parent Company: Orion Group

Subsidiaries: Fire and Casualty Insurance Company of Connecticut

Texas Lloyds

Connecticut Indemnity

Security Reinsurance

Connecticut Specialty Insurance Group

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CITATION OF JUDGMENTS BELOW

(not cited by petitioner)

1. Denial of Motion for Judgment, App. 2A.

STATUTE INVOLVED

28 U.S.C. § 2101(c)

CONCISE STATEMENT OF THE CASE

In 1983 Wilson, the Petitioner, brought an uninsured motorist arbitration proceeding for personal injuries against Security Insurance Co., the Respondent. A majority of the arbitration panel awarded Wilson $240,000 less a workers' compensation offset of $74,033.39. In its August 18, 1988 application to the Connecticut Superior Court to vacate the uninsured motorist arbitration award, Security stated that it "moves the Court to vacate the majority award for the reason that said award was based on an erroneous interpretation of Connecticut law and therefore exceeded the arbitrators' powers." (Petitioner's App. 49). On September 12, 1988 Security filed an amendment to its application enumerating two specific claims of legal error: the majority of the panel of arbitrators erred as a matter of law in interpreting the insurance policy in question to conclude (a) that Wilson was a named insured under the policy; and (b) that Wilson was entitled to stack coverage of six vehicles insured under the fleet policy at $40,000 per vehicle to obtain a maximum limit of $240,000.00 (App. 1A).

The two issues raised by Security in its amended application to vacate are the precise issues it raised before the Connecticut Supreme Court (Petitioner's App. 15). The Connecticut Supreme Court held that as a matter of law the stacking of uninsured motorist coverage for multiple vehicles in-

sured under a fleet automobile liability policy is not permitted (Petitioner's App. 15). Because of its resolution of the fleet stacking issue, the Connecticut Supreme Court declined to reach Security's first issue (Petitioner's App. 15).

Wilson challenged Security's right to a workers' compensation setoff in an appeal from the denial of his Motion to Correct the Arbitration award but lost on that issue. That appeal was treated as a cross appeal by the Connecticut Supreme Court (Petitioner's App. 19).

The Connecticut Supreme Court passed on all the federal questions now raised by the petitioner when it found for the respondent.

This decision was rendered on January 30, 1990. The Connecticut Supreme Court denied Wilson's Motion to Reargue on February 21, 1990 (Petitioner's App. 51). On May 21, 1990, Wilson filed a petition for Writ of Certiorari (No. 89-1808) from the Connecticut Supreme Court's decision. That petition was denied October 1, 1990. 111 S.Ct. 52.

In its decision rendered January 30, 1990, the Connecticut Supreme Court remanded the matter with direction to vacate the judgment and to modify the arbitration award to reflect uninsured motorist coverage in the amount of $40,000. The Court found no error on the cross appeal (Petitioner's App. 19). That decision was rendered on January 30, 1990.

As a result of the Court's decision, the total amount of coverage available to Wilson was $40,000. However, $74,033.39 in workers' compensation benefits had been paid to Wilson (Petitioner's App. 14). Under the policy, that amount was setoff against any coverage available (Petitioner's App. 38). Although the trial court modified the arbitration award to reflect uninsured motorist coverage of $40,000, it refused to enter judgment for Security because the remand order had no such instructions (App. 3A). Security filed a motion in the

Connecticut Supreme Court, requesting it to exercise its supervisory powers and order the trial court to enter judgment for Security (Petitioner's App. 2). The basis of that motion was that the trial court, pursuant to the Court's remand, had the authority to make an undisputed mathematical calculation by subtracting the setoff of $74,033.39 from the coverage of $40,000, with the result that Security was entitled to judgment as the setoff exceeded coverage (Petitioner's App. 7-9). That motion was granted on July 9, 1991 (Petitioner's App. 1). Wilson has again filed a Petition for Writ of Certiorari, raising one of the same issues (and abandoning the other) contained in his prior petition.

ARGUMENT

1. Timeliness

The Connecticut Supreme Court resolved both the issue of fleet coverage and the issue of a workers' compensation setoff against Wilson in its decision entered January 30, 1990. Wilson's motion for reargument of that decision was denied on February 21, 1990. Indeed, Wilson petitioned this Court for a Writ of Certiorari on May 21, 1990 challenging the Connecticut decision on several grounds, including the same due process challenge he again raises in the pending petition. The first petition was denied on October 1, 1991. 111 S.Ct. 52.

Security's Motion for Exercise of Supervisory Powers sought to enforce and not alter the Connecticut Supreme Court's decision. The basis of that motion was that the trial court misunderstood the remand which did in fact require judgment for Security. The decision entered on January 30, 1990 held that coverage was limited to $40,000. The only change ordered in the arbitration award was the reduction of coverage to $40,000. The finding by the arbitrators that there was a workers' compensation setoff of $74,033.39 against the coverage provided under Security's policy was not disturbed. The entry of judgment therefore was a matter of simple mathematics ($40,000−$74,033.39 = no coverage available).

The Motion for Exercise of Supervisory Powers did not seek an "alteration of the rights adjudicated" and therefore did not suspend the judgment's finality for purposes of petitioning for a writ of certiorari. See *Missouri v. Jenkins*, ____ U.S. ____, 110 S.Ct. 1651, 1660, n. 13, 109 L.Ed.2d 31 (1990); *FCC v. League of Women Voters of California*, 468 U.S. 364, 373, n. 10, 104 S.Ct. 3106, 82 L.Ed.2d 278 (1984); *FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211, 73 S.Ct. 245, 97 L.Ed. 245 (1952). That being so, the petition is untimely under 28 U.S.C. § 2101(c) and should be dismissed.

2. Record for Review

Wilson's argument appears to be comprised of two claims which he raised in his previous petition. The first is that the Connecticut Supreme Court had an insufficient factual record before it to decide the fleet stacking issue and that the Court therefore made its own findings of fact.[1] Wilson is wrong on both points.

To decide whether fleet stacking was permissible the Court had to construe the policy under which Wilson made a claim. There is no dispute that the entire policy was part of the record before the trial court and the Connecticut Supreme Court. Wilson's complaint that the Court lacked evidence of the subjective expectation of the parties ignores the Court's holding that "'[t]he notion of 'stacking' as an objectively reasonable expectation of the parties [did] not . . . extend to fleet insurance contracts.' *Cohn v. Aetna Ins. Co.*, [213 Conn. 525, 530, 569 A.2d 541 (1990)]." (Petitioner's App. 15). The parties' subjective intent is irrelevant under the objective standard used by the Connecticut Supreme Court.

The reviewing Court made no findings of fact. Rather, the Court reviewed the terms of the policy, noting that stacking would mean that the Town of Woodbridge had purchased $38,440,000 worth of uninsured motorist coverage for a premium of $137 (Petitioner's App. 16). The Court concluded that as a matter of law such an expectation is not reasonable under the terms of the policy (Petitioner's App. 16).

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[1] Wilson misstates the standard of review in uninsured motorist cases. In *American Universal Ins. Co. v. DelGreco*, 205 Conn. 175, 184-91, 550 A.2d 171 (1987), the Connecticut Supreme Court held that de novo review of the interpretation and application of the law by the arbitrators is required. That is the standard the Connecticut Supreme Court applied here. Petitioner also cites *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646, 591 A.2d 101 (1991), which adopts a substantial evidence standard of review of factual findings in compulsory arbitration cases. That case is inapplicable here because there were no issues of fact before the Court.

As for the workers' compensation setoff, Wilson challenged its validity in his cross appeal. That issue was resolved against him (Petitioner's App. 16-19). Wilson offers no authority which supports his right to relitigate that claim.

That Wilson disagrees with the Court's conclusion cannot transform his claims into a due process violation. Wilson's right to due process cannot have been violated on the basis that evidence irrelevant to the Court's ultimate conclusion was not presented to the Court.

3. Lack of Significance of Issues

Rule 10 states that a petition should be granted only for "special and important reasons." Three such reasons would be if the Connecticut Supreme Court's decision on a federal question conflicted with a decision of another state's highest court or a federal court of appeals, or if the Connecticut Supreme Court had decided an important unsettled issue of federal law, or if it had decided an important issue of federal law in conflict with decisions of this Court. Rule 10(b), (c).

In Wilson's 27-page petition, there is no citation of any case from another state. It is not until page 24 that any federal cases are cited. Those cases are all cited for general propositions governing the conduct of consensual arbitration hearings, review of awards rendered pursuant to such hearings, and review of administrative agency decisions under the APA. That is all. The Connecticut Supreme Court determined that it had an adequate record to decide de novo the issues of law arising from the compulsory arbitration between these parties. Wilson has not shown that this decision conflicts with the decisions of any other court or that it raises an important federal issue, unsettled or otherwise.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

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AMENDED APPLICATION TO VACATE 1A

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CV 88 274461	: SUPERIOR COURT
SECURITY INSURANCE GROUP	: JUDICIAL DISTRICT OF NEW HAVEN
VS.	AT NEW HAVEN
JAMES WILSON	: SEPTEMBER 12,1988

AMENDED APPLICATION TO VACATE ARBITRATION AWARD

The Plaintiff hereby amends its Application to Vacate Arbitration Award dated August 18, 1988 by adding the following paragraphs:

5. The majority erred as a matter of law in interpreting the policy identified as Exhibit A attached to the Plaintiff's original Application dated 8/18/88 and concluding that:

(a) the Defendant was a named insured under the policy; and

(b) the Defendant was entitled to stack coverage of six vehicles insured under this fleet policy to obtain a maximum limit of $240,000.

PLAINTIFF, SECURITY INSURANCE GROUP

By /s/ Susan M. Cormier

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ORAL JUDGMENT DENYING RESPONDENT'S MOTION FOR JUDGMENT

(Excerpt from 6/11/91 Hearing)

* * *

MS. CORMIER: Yes, your Honor, that's my point is that the original arbitration award specifically found a set up of $74,000, the Supreme Court noted that in the decision. Attorney Reilly, Wilson, cross appealed and there was no error. And therefore our position is that the arbitration award in effect, as your Honor corrected it –

THE COURT: Is $35,000.

MS. CORMIER: Is zero.

THE COURT: Is zero?

MS. CORMIER: Because there's coverage of $40,000, there's a set off of $74,000.

THE COURT: Yes.

MS. CORMIER: And your Honor all we're asking is for this Court to say I do this math and judgment is entered for Security, for the reason I think is obvious, your Honor, is that my understanding is that the Supreme Court decision ended the matter. Attorney Reilly –

THE COURT: My understanding –

MS. CORMIER: Attorney Reilly really has a different understanding, that's why, your Honor, I'm trying to get your Honor to make those mathematical corrections. And I would also refer this to the Court to Chmielewski, in which the Supreme Court said the trial court should have modified the award to reflect certain findings, similar types of findings about comparative negligence and credits.

THE COURT: All right. That request is denied also. I'm going to follow exactly what the remand order is, if the Supreme Court wanted the trial court to take some other action the Supreme Court could have directed the trial court to do that.

MR. REILLY: Your Honor, stated that there was a judgment entered 1990?

THE COURT: That's my – that's the note. The judgment was entered on March 19, 1990, immediately – well, not immediately but fairly close to the date of remand.

MS. CORMIER: Yes, your Honor, the Court set it down for a special hearing on its own when you got the remand and that was entered at that time, yes.

THE COURT: The motion to reargue is denied and the motion of Security Insurance to make enter any further judgment is also denied.

Thank you, counsel.

* * *

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

* * *

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

* * *